



March 28, 2016

VIA FOIA ONLINE

Regional Freedom of Information Officer
U.S. Environmental Protection Agency, Region 10
Office of Ecosystems, Tribal and Public Affairs
1200 6th Avenue ETPA-124
Seattle, WA 98101

Re: Freedom of Information Act Request Regarding Juneau Access Improvement Project

Dear FOIA Officer:

Earthjustice, on behalf of Lynn Canal Conservation, Natural Resources Defense Council, Sierra Club, and Southeast Alaska Conservation Council, submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Documents Requested

On April 3, 2006, the Federal Highway Administration (FHWA) signed a Record of Decision (the ROD) selecting Alternative 2B as the proposed action for the Juneau Access Improvement Project. The ROD followed a Final Environmental Impact Statement (the FEIS) prepared by the Alaska Department of Transportation and Public Facilities (ADOT) and approved by FHWA. On May 4, 2011, the Ninth Circuit Court of Appeals ruled the FEIS violated the National Environmental Policy Act by failing to consider as a project alternative any plan that would improve existing ferry services in Lynn Canal, Alaska, without the construction of new roads, ferries, or terminals. In light of that decision, ADOT and FHWA prepared a new Draft Supplemental Environmental Impact Statement for the Juneau Access Improvement Project (the Draft SEIS). ADOT released the Draft SEIS for public review and comment on September 18, 2014, and is in the process of preparing the Final Supplemental Environmental Impact Statement (Final SEIS).

We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic mail records, or other documents which have been generated, received, kept and/or considered by the Environmental Protection Agency (EPA) since September 2014 regarding the Juneau Access Improvement Project.

This request does not include copies of documents or any other information already available on the ADOT or FHWA websites. This request also does not include any documents provided in response to our September 22, 2014, request, FOIA Request EPA-R10-2014-010617.

We prefer to receive documents responsive to our request in electronic format, if possible. We expect EPA's response will comply with the Attorney General's March 2009 memorandum, reiterating President Obama's directive that in "the face of doubt, openness prevails." Attorney General, Memorandum for Heads of Executive Departments and Agencies at 1 (March 19, 2009). Accordingly, EPA should apply a presumption in favor of disclosure and consider that it "should not withhold information simply because it may do so legally." *Id.*

Fee Waiver Requested

We request a waiver of any fees associated with this request. FOIA mandates that agencies waive or reduce search and copying fees where the disclosure is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

In addition to the statutory direction, EPA has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted, including whether: (1) the request concerns the operations or activities of the government; (2) the disclosure will likely contribute to an understanding of Government operations or activities; (3) the disclosure will contribute to public understanding; (4) the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities; and (5) the disclosure is not primarily in the requester's commercial interest. *See* 40 C.F.R. §§ 2.107(l)(2)-(3).

As one court explained, if a non-profit organization has "identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership," then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that the requesting groups meet the required criteria and are entitled to a full fee waiver.

1. The Request Concerns Government Operations and Activities.

EPA is a cooperating agency for the Juneau Access Improvement Project SEIS. As such, this FOIA request seeks information relevant to EPA's management of aquatic resources, including wetlands, anadromous fish streams, riparian areas, and wildlife, that may be affected by the construction and operation of the proposed road. Accordingly, this FOIA request directly concerns the operations and activities of the government in managing public resources in southeast Alaska.

2. Disclosure Will Contribute to Public Understanding of EPA Operations and Activities.

There is a direct connection between the requested records and the requestors' interest in and desire to inform the public about EPA's management activities of aquatic resources in southeast Alaska. The requested records relate to the government's evaluation of the Juneau Access Improvement Project and its impacts on wetlands, fish streams, and wildlife. Access to these records will allow the requesting groups to evaluate the analyses and compliance with applicable laws and regulations. Consequently, the requested documents are critical to a meaningful assessment of the agency's actions and a thorough public understanding of the government's operations and activities in southeast Alaska.

The requesters are public-interest organizations dedicated to protecting the environment, public resources, and human health by, among other mechanisms, monitoring government management of public lands, encouraging public participation in government processes, and ensuring enforcement of applicable public laws. We will scrutinize the scientific and legal underpinnings of EPA's evaluation of the Draft SEIS and Final SEIS, and these analyses will form the basis for responding to the actions taken by ADOT and FHWA and educating the public. *See Friends of the Coast Fork v. United States Dep't of the Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

The requesting groups also intend to disseminate information that may be available in the requested records through various means, including newsletters, reports, newspaper and magazine articles, web sites, and through other formal and informal communications. These types of public outreach are sufficient to warrant a fee waiver. *See W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding "statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest requestors, government agencies, and the general public sufficient to entitle an organization to a fee waiver").

The requesting organizations possess the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. *Cf. W. Watersheds Proj.*, 318 F. Supp. 2d at 1040-41. The groups are qualified to extract, synthesize, analyze, and convey the requested information to our supporters, including members who live in affected communities along the potential road corridor; other organizations; and the public at large in a way that will increase understanding of government actions affecting public resources in southeast Alaska. The organizations have scientists, lawyers, and communications professionals who specialize in public outreach. They use that expertise to analyze and evaluate information about governmental decisions affecting public resources and provide our analyses and evaluations to our supporters, other organizations, and the general public.

These groups have a long history of evaluating information similar to that requested here and distributing it to help inform the public and encourage participation in future planning

processes. They have been involved in various public processes involving the Juneau Access Improvement Project.

3. The Disclosure Will Contribute Significantly to Public Understanding.

Issues involving the Juneau Access Improvement Project are of significant public interest. The requested disclosure will increase public understanding of EPA's actions relating to the proposed road. Although the 2012 Scoping Summary Report, the 2013 Revised Alternatives, and the Draft SEIS are available to the public, other supporting documents are not. These records will provide recent information underlying the agency's decision-making, afford insight into the agency's decision-making processes, and highlight any competing viewpoints. These records will allow the requesting groups to evaluate the agency's decision-making and the adequacy of the analyses, facilitating public oversight of agency operations.

4. The Requesters Have No Commercial Interest in the Disclosure of the Information.

The requesting groups are nonprofit organizations that have no commercial interest in the requested records. See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requestors" (quoting legislative history)).

Please contact me if you have any questions, or if I can clarify this request in any way. I can be reached at 907-500-7133. As provided by FOIA, 5 U.S.C. § 552(a)(6)(A), we look forward to a reply within twenty working days. Thank you in advance for your assistance.

Sincerely,
s/ Holly A. Harris
Holly A. Harris
Attorney
Earthjustice